



CITY OF BEAVERTON REQUEST FOR PROPOSALS

Beaverton Night Market Manager – Professional Services

The City of Beaverton is seeking informal proposals from qualified consultants to provide professional services assistance to support the city's Beaverton Night Market. Consultants are invited to submit a project approach and contract price for the services listed in Section 2, Scope of Work. The City expects to enter into a contract with a vendor that provides the most advantageous proposal to the City.

Solicitation Details:

- **Anticipated Timeframe for Consultant Contract:** January 2017 – October 2017
- **Total Project Cost Not to Exceed:** \$12,000
- **Informal Proposal Format:** Consultants wishing to respond to the RFP should submit a proposal no greater than five pages (including consultant's background & experience). Proposals must demonstrate how they successfully address the Scope of Work detailed in Section 2.1 of the RFP. All submissions will be evaluated against the criteria outlined in Section 3.1.

Informal proposals will be received until **5:00 PM PDT, January 5, 2017**, via email to equity@beavertonoregon.gov. For questions, please contact Alexis Ball at 503-526-2503.

SECTION 1: INTRODUCTION & BACKGROUND

1.1 Introduction

The Beaverton Night Market is a project of the City of Beaverton's Diversity Advisory Board (DAB), which exists to advise the city on equity and inclusion strategies that strengthen connections between diverse communities living in Beaverton and city government. In their first year together, the DAB identified community priorities and outlined recommendations in a publication titled the *Diversity, Equity, and Inclusion Plan* (DEI Plan), subsequently adopted by City Council. The recommendations span eight key areas, including: language access, individual &

family support, public safety, economic opportunity, infrastructure & livability, health & wellness, city practices, and a multicultural community center.

The Beaverton Night Market is an action item from the Economic Opportunity section of the DEI Plan. The market has since also been included in the Beaverton Community Vision (2016 update), which guides the Mayor and City Council in setting annual city priorities and allocating resources.

Though the original vision was to create a regular, seasonal night market, the decision was made to pilot the market as a single event during its first year in order to build experience and support before evaluating how to best launch a more sustained effort.

The purpose of the Beaverton Night Market is to create a vibrant, intercultural, family-friendly space that is reminiscent of night markets internationally. The market offers a culturally-relevant evening activity and gathering space with ethnic food and crafts for families of all backgrounds in Beaverton. The goals of the market are to:

1. Foster a space for cross-cultural exchange and interaction by community members.
2. Create a space for emerging ethnic food and craft vendors to showcase their work and share their traditions.
3. Promote economic opportunity for culturally-specific businesses in Beaverton.
4. Offer a fun, family-friendly, cultural activity locally.

1.2 Background

The first Beaverton Night Market was held on September 12, 2015 on the south plaza of The Round (12600 SW Crescent), just off the Beaverton Central MAX stop. The 2015 market included twenty vendors and nine community performances, and ran for 5 hours in the evening. The summer 2015 debut was a one-day pilot event planned and hosted by the DAB night market coordinating committee, with coordination support from the Cultural Inclusion Program. An estimated 5,000 people attended the market.

Due to its overwhelming success in the first year, the 2016 market was expanded in size and to two dates (July 23 and August 13th, 2016). The city's events team was brought in and a market manager was contracted to support the event (with the DAB night market coordinating committee still providing key direction), which allowed for much more staff capacity and budget to support the market. The layout of the market grew to three times the size of the previous year, with vendors expanding in the south plaza of the Round and into the 24-Hour Fitness parking lot, and the performance stage and viewing area moved to the north side of the Round. The event was also shortened to four hours. Thirty-eight vendors and thirteen total performers participated in 2016 markets. Vendor orientation sessions were augmented to incorporate business development support and resources as well as provide coaching to increase success at the market. The 2016 markets attracted an estimated combined total of 14,000 attendees.

Attendance to the market has been free and open to the public. There has been no fee charged to vendors for booth space, though vendor-specific insurance coverage and proof of applicable county health permits have been required. Scholarships have been offered to offset these costs for select

vendors in their first year that would otherwise likely not be able to participate in the market. Intentional outreach and recruitment of vendors and performers that represent the diversity of world cultures present in Beaverton has been a key piece of the foundational work of the first years. There is now a strong existing network of vendors and performers that have participated in and/or attended Beaverton Night Markets in 2015 and 2016, many of which have expressed a desire to participate in future years. While continued outreach to provide access for new businesses and to fill cultural gaps will always be a priority, this pool of established participants forms a strong base to draw from for upcoming markets.

For 2017, the plan is to again host two markets in July and August with a similar number of vendors and site layout as the previous year. In intentionally choosing to not expand the market for the third year in a row, the goal for 2017 is to improve, stabilize, and deepen key elements that support the vision and future sustainability of the market. For example, the committee plans to shift some emphasis from the stage performances back to the market vendors to increase sales and create a better connection between the two spaces, explore how to deepen business support and engagement with vendors not just in the weeks before market events, promote the success of artisan and craft vendors at the market, and continue to create a strong foundation of regular participants representing the spectrum of cultural diversity in Beaverton.

The approximate planning and coordination schedule for the Beaverton Night Market in 2017 is as follows:

- **January – March 2017: Overall Market Planning and Infrastructure.** Begin regular meetings of project management team and DAB night market coordinating committee, review evaluation and recommendations from 2016 markets. Solidify market dates and any changes to overall vision for the market. Finalize permissions for site use and city support resources. Update vendor materials, site map, and outreach plan.
- **April – May 2017: Vendor and Performer Recruitment and Selection.** Coordinate outreach campaign to solicit vendor applications with an emphasis on broad cultural representation. Contact potential performers to gauge interest and begin to flesh out the stage schedule. Evaluate, select and extend invitations to final list of vendors to participate in the market.
- **May – June 2017: Vendor Preparation & Market Promotion.** Work with accepted vendors to confirm participation and collect all required paperwork. Plan and execute vendor orientation sessions, provide technical assistance to ensure vendor success, connect vendors with business support resources. Promote the market widely.
- **July – August 2017: Execute Markets.** Manage day-of logistics including set up and break down of market, vendor and performer support, parking, equipment use, signage, waste removal, decoration, social media, etc. Troubleshoot issues, manage volunteers, and coordinate with public safety personnel for event days.

- **September – October 2017: Wrap Up & Evaluation.** Support post-market follow up, evaluation, participant recognition and celebration. Create summary report and recommendations for next year.

SECTION 2: SCOPE OF WORK

2.1 Services to be Provided

The City of Beaverton is engaging a consultant with market management expertise to provide professional services to support the project. The consultant will work with city staff and DAB Night Market Coordinating Committee on project coordination. A Project Management Team will consist of the consultant, the city's events coordinator, and the cultural inclusion program coordinator to monitor and direct the project. The overall division of work between main coordinating bodies is envisioned in the following way:

A. DAB Night Market Coordinating Committee duties:

- Provide overall direction and approve any major changes to vision or scope of project
- Advise on and approve key decision points, including:
 - Design of promotional materials and marketing plan
 - Selection criteria and final list of vendors and performers
 - Market ambiance
- Perform key outreach to recruit diverse vendors, performers and market attendees.
- Act as official hosts for the market, including providing emcees for the stage.

B. Market Manager Consultant duties:

- Coordinate Project Management Team including setting agendas for regular meetings. Create and manage overall project execution schedule with calendar of key deadlines.
- Act as main point of contact for interested market vendors and performers.
- Develop and manage outreach plan in coordination with DAB Committee to attract potential vendors. Perform and/or facilitate extra, targeted outreach to fill gaps in cultural representation among applicants during regular recruitment period.
- Reach out to recruit potential performers, balancing appropriateness, availability and goals for cultural representation. Develop stage schedule.
- Make recommendations to DAB committee on vendor and performer selection.
- Coordinate with accepted vendors to confirm participation, collect required paperwork, provide technical assistance, and make connections to business resources. Manage vendor information lists.
- Plan vendor orientation sessions in coordination with city staff.
- Manage day-of market participant logistics including set up and break down of vendor spaces, market flow, troubleshooting, and overall plan for use of volunteers.
- Coordinate with city staff on budget issues, marketing, and promotion.
- Coordinate participant evaluation and recognition with city staff at end of event.
- Contribute to final project report.

C. City staff duties:

- Support and ensure DAB Committee's overall involvement and guidance of project, arrange for city spaces to meet.
- Coordinate overall site logistics (i.e. special events permit, site negotiation with city and nearby property managers, parking, signage, any street/lot closures, etc.).
- Coordinate support logistics (i.e. security presence, emergency planning, traffic and parking coordinators, participation by city officials and staff).
- Manage project budget, including obtaining approval for funds, processing invoices.
- Coordinate site infrastructure, including electricity and water infrastructure, garbage and recycling, and externally contracted services (i.e. stage/sound/lighting, portable toilets, tables/chairs, etc.).
- Manage promotion of market, including creation of materials, marketing, media relations, photography/videography and social media during the event.
- Recruit and train volunteer recruitment to staff markets.

2.2 Schedule of Work

The City expects selected proposer to deliver the deliverables according to the schedule identified in Section 2.1 above.

SECTION 3: EVALUATION & AWARD

3.1 Evaluation Criteria

City staff will evaluate proposals to determine which one best meets the needs of the City. Evaluation will be based on the following described criteria not just price.

<u>EVALUATION CRITERIA</u>	<u>MAXIMUM POINTS</u>
1. Experience and Expertise <ul style="list-style-type: none">• Specific experience with managing markets• Experience in communicating and coordinating with government entities• Experience in event coordination, creativity in troubleshooting issues, responding quickly in stressful situations• Experience in multicultural community outreach and organizing• Ability to communicate and work effectively with a diverse group of vendors, many of which are English Language Learners• Experience managing complex projects, multiple stakeholders with different needs• Experience with recruitment and relationship building, providing one-on-one support• Proposal includes relevant history and bios on consultant/team members	40

Request for Proposals for _____ (insert Title and closing date and time)

Rev. 05/12/14

2. Project Approach and Understanding <ul style="list-style-type: none"> • Successfully addresses all aspects in the Scope of Work (Section 2.1 B) in proposal • Demonstrates understanding of and alignment with vision and goals of the project • Values working with diverse populations and models of collective decision-making • Demonstrates an understanding of and comfort with the division of work as outlined in Scope of Work (Section 2.1) • Demonstrates a thorough understanding of scope involved in this role 	40
3. Cost <ul style="list-style-type: none"> • Total Project Cost • Hourly rate • Additional expenses besides hourly rate 	10
4. Certification <ul style="list-style-type: none"> • Certified by the State of Oregon as an MBE, WBE, ESB or SDV 	10
Maximum Total Points	100

3.2 Clarifications of Proposals

The City reserves the right to obtain clarification of any point in a consultant's proposal or to obtain additional information necessary to properly evaluate a particular proposal, but will not, in any way, provide an opportunity to change any fee amount originally proposed. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of the firm's proposal.

3.3 Award

Award will be made to the highest ranking consultant whose proposal best meets the needs of the City as set forth herein.

SECTION 4: GENERAL INFORMATION

4.1 Submittal of Proposals

Submit proposal by email to **no later than 5:00 PM on January 5, 2017**, to Alexis Ball at equity@beavertonoregon.gov. The submission and signing of a proposal shall indicate the intention of the contractor to adhere to the provisions described in this Request for Proposal (RFP).

4.2 Business License/Taxpayer ID Number

A Proposer awarded a contract shall obtain a City business license as required by Beaverton Code section 7.01 prior to beginning work under this contract and must pay all fees due under the Business License Law during the term of the contract.

Request for Proposals for _____ (insert Title and closing date and time)

Rev. 05/12/14

A Proposer awarded a contract shall complete an IRS Form W-9 for the City and provide the City with either the Proposer's Social Security Number or federal taxpayer ID number. This number is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). Social Security numbers provided pursuant to this requirement will be used for the administration of state, federal and local tax laws.

4.3 Contract Administrator

The Contract Administrator will be Alexis Ball who can be reached by telephone at 503-526-2503 or by e-mail at aball@beavertonoregon.gov.

4.4 Form of Contract

A copy of the standard Personal Service contract which the City expects the successful firm or individual to execute is included as Attachment "A". The contract will incorporate the terms and conditions from this RFP document and the submitted proposal. **Proposers taking exception to any of the contract terms or conditions must submit a request for a change standard contract terms and conditions WITH THEIR PROPOSAL, or the exceptions will be deemed waived.** The City Attorney will review all requests for changes and may or may not accept the requested exceptions.

ATTACHMENT "A" PERSONAL SERVICE CONTRACT

PERSONAL SERVICES CONTRACT # _____

TO PROVIDE PERSONAL SERVICES RELATING TO:

THIS CONTRACT FOR PERSONAL SERVICES ("Contract") is entered into between the City of Beaverton, Oregon, located at 4755 SW Griffith Drive, P.O. Box 4755, Beaverton, Oregon 97076-4755 ("City") and _____ located at _____ ("Contractor"). The City's primary supervisor for this Contract ("Contract Administrator") is _____.

THE PARTIES HEREBY AGREE THAT:

1. EFFECTIVE DATE; DURATION. This Contract shall become effective on the date this Contract has been signed by every party hereto and, approved by legal counsel for the City. Unless terminated or extended, this Contract shall expire when City accepts Contractor's completed performance or on _____, 20__, whichever date occurs first.

2. STATEMENT OF WORK. In accordance with the terms and conditions of this Contract, Contractor shall perform the services as scheduled ("Work") and as set forth in Contractor's proposal dated _____, and incorporated herein by this reference.

3. CONTRACT DOCUMENTS. In the event of a conflict between or among the terms of this instrument, any proposal and/or request for proposals, the following order of precedence shall prevail: (a) this instrument, (b) the request for proposal, (c) the proposal. Nothing herein shall be considered as an acceptance of the terms of a proposal if the terms of the proposal conflict or are otherwise incompatible with the express terms contained herein or in the City's request for proposal.

☐ City's Request for Proposal dated _____, is attached hereto as Exhibit "B" and incorporated herein by this reference. (*Attach RFP if Contract results from RFP solicitation.*)

4. CONSIDERATION. City shall pay Contractor ☐ the sum of \$ _____ or ☐ at the hourly rate of \$ _____ for satisfactory accomplishment of the Work required by this Contract. The **MAXIMUM, NOT-TO-EXCEED AMOUNT** of compensation payable to Contractor under this Contract, which includes any allowable expenses or reimbursement, is \$ _____.

5. BILLING AND PAYMENT SCHEDULE. At least thirty (30) days prior to due date of payment, Contractor shall prepare and submit to **THE CITY OF BEAVERTON, ATTENTION: _____ DEPARTMENT, PO BOX 4755, BEAVERTON, OREGON 97076,** an invoice of services rendered. Payment shall be made upon Contract Administrator's approval and acceptance of Contractor's completed Work described herein, whereupon Contract Administrator shall submit a payment request to City's Finance Department. If this Contract

Request for Proposals for _____ (insert Title and closing date and time)

specifies an end product, an amount up to 10 percent of the total sum of money to be paid for the satisfactory accomplishment of the Work may be withheld until all required Work is completed and accepted. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended. Interim payments to Contractor for partial completion of tasks or services may be made only upon prior written authorization of City. When made, interim payment shall release City from any further obligation for payment to Contractor for Work performed or expenses incurred as of the date of the invoice of services rendered.

6. AVAILABILITY OF FUNDS. City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

7. ASSIGNMENT AND SUBCONTRACTORS. Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate duties hereunder, either in whole or in part, without the City's prior written consent; provided, however, that money due to Contractor may be assigned, if the City is given written notice thereof, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the City. The City may rescind this Agreement if an assignment is made without the prior written consent of the City. The rights hereunder may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this agreement if transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. In no instance shall City's consent to an assignment of rights or delegation of duties relieve Contractor of any obligations hereunder. Any assignee, transferee or subcontractor shall be considered the agent of the Contractor and be bound to abide by all provisions of this Contract. Contractor, and its surety, if any, shall remain liable to City for complete performance of this Contract as if no such assignment, sale, subcontracting, disposal, transfer or delegation had occurred, unless City otherwise agrees in writing. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

8. TERMINATION. The parties may effect termination of this Contract in the manners indicated:

- a. **Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. **City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. **City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as City may establish in such notice, upon the occurrence of any of the following events:
 - (i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;

Request for Proposals for _____ (insert Title and closing date and time)

- (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the work; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of City's notice, or such longer period as City may specify in such notice.
- d. **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' notice to City if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.
- e. **Remedies.** (i) In the event of termination pursuant to subsections a, b, c(i), c(ii) or d, of this Section, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by City, less previous amounts paid and any claim(s) which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand. (ii) In the event of termination pursuant to subsection c(iii) or c(iv) of this Section, City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection c(iii) or c(iv) of this Section, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection b of this Section.
- f. **Contractor's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the work.

9. FORCE MAJEURE. Neither party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods earthquakes, fires, acts of God, acts of the public enemy, epidemic, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a party's reasonable control and without the fault or negligence of the party. The affected party, however, shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefor to the other party within 30 days after the delayed party Request for Proposals for _____(insert Title and closing date and time)

learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause. Delays under this paragraph shall not be the basis for additional compensation payable to the Contractor.

10. MODIFICATION. Any modification of the provisions of this Contract shall not be enforceable unless first reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City over the agreed sum or changes or modifies the Statement of Services or Delivery Schedule. Any such modification shall be effective only in the specific instance and for the specific purpose identified in the modification. In the event that Contractor receives any communication of whatsoever nature from City that Contractor contends gives rise to any modification of this Contract, Contractor shall, within 15 calendar days after receipt, make a written request for modification to City. Contractor's failure to submit such written request for modification in a timely manner is a basis upon which City may refuse to treat said communication as a modification. In connection with any modification to the Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment and other costs. If Contractor incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original Contract or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

11. ACCESS TO RECORDS. Contractor shall maintain all books, documents, papers and records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives, shall have access to Contractor's books, documents, papers, plans, writings and records that are directly pertinent to this Contract for the purpose of performing examinations and audits and making excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years from the date of Contract expiration, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by City. The state and federal governments and their duly authorized representatives are intended beneficiaries of the terms of this provision.

12. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and executive orders applicable to the Work to be performed under this Contract. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules or regulations shall not relieve Contractor of these obligations or the requirements of this Contract. Without limiting the foregoing, Contractor shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, color, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279A, 279B and 279C relating to public contracts. The required contract conditions of ORS 279B.220, ORS 279B.225, ORS 279B.230 and ORS 279B.235 are hereby incorporated herein by this reference and made binding upon City and Contractor. Contractor shall safeguard consumer personal information pursuant to ORS 646A.600 to 646A.628 (the Oregon Request for Proposals for _____ (insert Title and closing date and time)

Consumer Identity Theft Protection Act). The parties shall comply with any state or federal law or regulation specific to the funding source that supports this Contract.

Contractor shall obtain a City of Beaverton business license as required by BC 7.01 prior to beginning work under this Contract. Contractor shall provide the business license number in the space provided on the signature page of this Contract. Additionally, Contractor shall pay all fees due under the Business License Law during the full term of this contract. Failure to be in full compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law.

13. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES & WITHHOLDING. The Work to be rendered under this Contract is that of an Independent Contractor. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. As used herein, "Independent Contractor" means that:

- a. Contractor is free from direction and control over the means and manner of providing labor or services, subject only to City's right to specify the desired results.
- b. Contractor is responsible for obtaining all required business registrations or professional occupational licenses.
- c. Contractor furnishes the tools or equipment necessary to perform the contracted labor or services.
- d. Contractor has the authority to hire and fire Contractor's employees.
- e. Contractor is registered under ORS chapter 701 to provide labor or services for which such registration is required.
- f. For labor and services performed as an Independent Contractor in the previous year, Contractor has either filed federal and state income tax returns in the name of Contractor's business or, in the alternative; Contractor has filed a Schedule C tax form as part of Contractor's personal income tax return.
- g. Contractor represents to the public that the labor or services described herein are to be provided by an independently established business.
- h. Payment to the Contractor is made upon completion or periodic completion of the performance required herein, or is made based on a periodic retainer.

Neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits (including, but not limited to, social security, workers' compensation and unemployment insurance benefits) that City provides its employees. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract. Unless Consultant is subject to backup withholding, City will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations.

14. REPRESENTATIONS AND WARRANTIES; STANDARD OF CARE. Contractor represents and warrants to City that:

- a. If Contractor is an entity (as opposed to a natural person), Contractor is duly organized and validly existing, in good standing under the laws of the jurisdiction of its organization

and is duly qualified and authorized to do business and is in good standing in all jurisdictions where it is required to be so qualified.

- b. Contractor has the legal power and authority to:
 - i. Transact the business in which Contractor is engaged and presently proposes to engage and
 - ii. Execute, deliver and perform this Contract.
- c. Contractor has taken all necessary action to authorize the execution, delivery and performance of this Contract.
- d. Contractor has duly executed and delivered this Contract.
- e. The execution, delivery and performance of this Contract by Contractor do not:
 - i. Contravene any applicable provision of any law, statute, rule or regulation, or any order, writ, injunction or decree of any court or governmental entity.
 - ii. Conflict with or result in any breach of any agreement to which Contractor is a party, or
 - iii. Violate any provision of any organizational documents of Contractor if Contractor is an entity (as opposed to a natural person).
- f. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, deliver and performance by the Contractor of this Contract, other than those that have already been obtained.
- g. When executed and delivered, this Contract shall constitute the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except to the extent that the enforceability may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- h. If Contractor provides personal services under this Contract, the Work under this Contract shall be performed in a good and workmanlike manner;
- i. If Contractor provides professional services under this Contract, the Work under this Contract shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill and diligence ordinarily exercised by members of the profession currently practicing under similar conditions; and
- j. Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

The warranties as to standard of care set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

15. OWNERSHIP OF WORK PRODUCT. Contractor is an independent contractor for purposes of determining whether Contractor's work product is "work made for hire" under provisions of the U.S. Copyright Act, 17 U.S.C. §§ 101 - 810. If Contractor's work meets the definition of a work made for hire by an independent contractor, then the work shall be considered a work made for hire and the City shall be deemed the work's author. If Contractor's work does not meet the definition of work made for hire by an independent contractor, then Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or Request for Proposals for _____ (insert Title and closing date and time)

doctrines. Contractor waives and releases all rights relating to the use of the work described in or encompassed by the Statement of Work of this Contract, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the scope of the Statement of Work of this Contract shall be without liability to Contractor. If Contractor is an architect providing professional architectural services, any plans, drawings and other work product produced within the scope of work of this contract are the property of the Contractor; by execution of this Contract, Contractor grants the City an exclusive and irrevocable license to use that work product.

16. INDEMNITY. With regard to the Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below in this Section, the Contractor hereby releases and shall indemnify, defend, and hold harmless the City, its officials, employees, agents and volunteers from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorney fees and costs at trial and on appeal, that arise from or are connected with or are directly or indirectly caused or claimed to be caused in whole or in part by the fault or negligent, reckless or willful acts or omissions of the Contractor and/or its agents, employees or subcontractors in performing Work herein; provided, however, that the Contractor's duty to release, indemnify and hold harmless shall not include any liability arising from the established sole negligence or willful misconduct of the City, its officials, employees, agents and volunteers.

With regard to the Contractor's performance of professional services, Contractor hereby releases and shall indemnify, defend, and hold harmless the City, its officials, employees, agents and volunteers from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorney fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its agents, employees or subcontractors associated with the Work.

17. INSURANCE. Contractor, at Contractor's own expense, shall procure and maintain in full force and effect for the duration of Contractor's Work under this Contract the types and coverage amounts of insurance conforming to these minimum requirements:

**WORKERS' COMPENSATION INSURANCE
AND EMPLOYER LIABILITY INSURANCE**

Required For All Workers Who Are Not Exempt

Contractor shall submit proof of Workers' Compensation Insurance for all persons who are "workers" as defined in ORS 656.005. A person who works under the Contractor's direction and control or the Contractor's right to control is a person for whom the Contractor must show proof of coverage unless the "worker" is a "non-subject worker" exempt from workers compensation insurance requirements under ORS 656.027. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, or show proof of extraterritorial coverage as per ORS 656.126. All Contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain in full force and effect for the duration of Contractor's or subcontractor's Work under this Contract Employer Liability Insurance with a Request for Proposals for _____ (insert Title and closing date and time)

combined single limit, or the equivalent, of not less than \$500,000 each employee per accident for bodily injury by accident or disease.

Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with this Contract provide Oregon workers' compensation coverage for all their subject workers as required by ORS 656.017 and shall keep on file a certificate of insurance from each subcontractor and anyone else directly employed by either the Contractor or subcontractor.

The Contractor should consult with its own insurance agent to determine if any person who is engaged by Contractor to perform any services under this Contract is a "subject worker" for whom Contractor must provide workers compensation insurance. Contractor may declare itself exempt from this insurance requirement if it is not an "employer" who contracts to pay remuneration for and secures the right to direct and control the services of any person, as per ORS 656.006(13), to perform such services. A Contractor who makes that declaration and who does not provide that insurance may be deemed a non-complying employer under Oregon law. **A contractor who makes that declaration hereby agrees to hold City harmless from and indemnify City against any and all claims for compensation benefits made against the City by subject workers employed by the Contractor to do any of the work of the Contract.** A Contractor who declares itself exempt from providing the Workers Compensation insurance coverage otherwise required by this Contract shall make that declaration in signed and dated writing to be attached to this Contract.

COMMERCIAL GENERAL LIABILITY INSURANCE

☐ Required; ☐ Not Required.

Commercial general liability insurance with a combined single limit, or the equivalent, of not less than ☐ \$1,000,000; ☐ \$2,000,000; or ☐ \$5,000,000 per occurrence with a ☐ \$2,000,000; ☐ \$4,000,000; or ☐ \$10,000,000 annual aggregate limit, covering, but not limited to, liability for personal injury and property damage and aggregate limits shall apply on a per project basis. The policy shall be written on an occurrence basis on ISO Form CG 00 01 (Commercial General Liability Coverage Form), or its equivalent, and shall include contractual liability covering the assumption of the tort liability (including defense costs) of another party by written contract for both ongoing operations and completed operations under this contract. The City of Beaverton and its officials, employees, agents and volunteers shall be named as additional insureds under ISO Form CG 2010 (Additional Insureds – Owners, Lessees or Contractors – Scheduled Person or Organization), or its equivalent, and CG 2037 (Additional Insured – Owners Lessees or Contractors – Completed Operations), or its equivalent, with respect to the Work to be provided under this Contract. The commercial general liability insurance coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured and is primary and non-contributory with any City insurance or self-insurance program.

AUTOMOBILE LIABILITY INSURANCE

☐ Required; ☐ Not Required.

Automobile Liability Insurance on ISO Form CA 00 01 (Business Auto Coverage), or its equivalent, with an each accident limit of not less than ☐ \$1,000,000, or ☐ \$2,000,000 covering, but not limited to, liability for bodily injury and property damage, for "any auto," including owned, non-owned and hired autos used in connection with the performance of the Work. The City of Beaverton and its Request for Proposals for _____ (insert Title and closing date and time)

officials, employees, agents and volunteers shall be named additional insureds under Endorsement CA 20 48 (Designated Insured), or its equivalent. The automobile liability insurance required by this Contract is primary to and non-contributory with any City insurance or self-insurance program; any deductible cannot exceed \$5000. If Contractor is declaring Contractor excused from any requirement to provide Automobile Liability Insurance coverage because Contractor does not use an automobile in connection with Work under this Contract, Contractor may initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

18. INSURANCE CERTIFICATION; OTHER INSURANCE REQUIREMENTS. Before Contractor commences Work under this Contract, Contractor shall furnish City, through its Risk Manager, with acceptable certificates evidencing the types, amounts and issuers of insurance coverage meeting the minimum requirements of this Contract. The certificate shall specify all of the parties who are Additional Insureds. If a certificate of insurance coverage is unavailable from a particular insurer, alternative proof of insurance coverage acceptable to City shall be arranged. Renewal certificates of insurance shall be furnished no later than 15 days before the expiration of the policy. Any deductibles or self-insured retentions must be stated on the certificate of insurance, which shall be sent to and approved by City's Risk Manager in advance to commencement of Work under this contract.

In all instances concerning all forms of insurance required by this Contract:

- a. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to the Oregon Surplus Lines Law (ORS 735.400 to 735.495);
- b. Upon request, complete copies of insurance policies, trust agreements, etc. shall be provided to City;
- c. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance amounts;
- d. Umbrella or Excess Liability Insurance may be used to achieve the above minimum liability limits, so long as policy is endorsed to state it is "As Broad as Primary Policy." If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required;
- e. Contractor shall provide City not less than 30 days written notice of Contractor's intent to cancel, terminate or make any material change affecting required insurance coverage;
- f. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance with an insurer meeting the requirements
- g. Except for Professional Liability Insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and Financial Performance Rating of 7 or better. Contractor's Professional Liability Insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at

Contractor's own expense, maintains the Professional Liability Insurance in full force for not less 24 months following completion of this Contract; and

- h. The commercial general liability insurance and automobile liability insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any commercial general liability insurance maintained by the City shall be excess of and shall not contribute with the commercial general liability insurance provided by Contractor and its subcontractors.

City reserves the right to review the types of coverages and limits of insurance required herein from time to time. In the event that City changes its insurance requirements after this Contract has been signed, City will provide notice to Contractor of the new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor will be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

19. LIMITATION OF LIABILITIES. Neither party shall be liable in contract, tort, strict liability, warranty or otherwise for (i) any special, indirect, incidental, consequential or non-economic damages resulting from or in any way related to this Contract, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system, or (ii) any damages of any sort whatsoever arising solely from the termination of this Contract in accordance with its terms; provided, however, the provision of this paragraph do not apply to liability arising under or relating to Section 8(e)(ii)(Termination) or Section 14 (Representations and Warranties; Standard of Care).

20. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or City at the address or number as identified herein above, or to such other addresses or numbers as either party from time to time may designate in writing. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

21. NO THIRD PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. CONFLICT OF INTEREST. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, will or has received any

remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

23. HAZARD COMMUNICATION. To the extent that Contractor provides City with any goods that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use, Contractor shall provide City with a Material Safety Data Sheet for any goods provided under this Contract that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor shall label, tag, or mark such goods.

24. DISCLOSURE OF SOCIAL SECURITY NUMBER. Contractor must provide Contractor's Social Security Number (SSN) unless Contractor provides an Employer Identification Number (EIN) or other valid form of Taxpayer Identification Number (TIN). SSN is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). SSN provided pursuant to this authority will be used for the administration of state, federal and local tax laws. Contractor's TIN will be reported to the Internal Revenue Service (IRS) under the name and TIN submitted. (See IRS 1099 for more information.) Information not matching IRS records may subject Contractor to backup withholding.

25. SURVIVAL. Expiration shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties and guarantees made in, required by or given by the Contractor in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to the Contractor, completion of the Work and termination or completion of the Contract.

26. TIME IS OF THE ESSENCE. Time is of the essence of this Contract.

27. GOVERNING LAW. This Contract is entered into and is to be performed in Oregon and shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Washington County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

28. CAPTIONS. The captions or headings in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

29. COUNTERPARTS. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

30. MERGER. This Contract (including, to the extent provided herein, any attached exhibits) constitutes the entire and integrated agreement between the parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. There are no Request for Proposals for _____ (insert Title and closing date and time)

understandings, agreements, representations, oral or written, not specified herein regarding this agreement.

31. WAIVER. City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Contract.

32. SEVERABILITY. If any term or provision, or portions thereof, of this Contract is declared by an arbiter or a court of competent jurisdiction to be illegal, invalid, void, or otherwise unenforceable, each such term or provision shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable; all other provisions and requirements of this Contract shall remain in full force and effect insofar as possible to preserve the lawful anticipated benefits of this Contract to the parties.

Certification

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws; (c) Contractor is an independent Contractor as defined in ORS 670.600; and (d) the Contractor data set forth herein is true and accurate.

The parties, by their signature below, acknowledge having read and understood the Contract and agree to be bound by its terms and conditions.

AGREED TO BY THE PARTIES HERETO:

CITY OF BEAVERTON, OREGON

CONTRACTOR

BY: _____

BY: _____

DATE: _____

TITLE: _____

DATE: _____

Approved as to legal sufficiency:

City of Beaverton Business License No.: _____
